IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 13085 of 2007(G)

OS.233/2004 of PRL.M.C.KOZHIKODE-I
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PETITIONER:

KAMBURATH MURALI @ RAMAN NAIR,
PUTHUKULANGARA, PARAMMAL P.O., KARUVISSERI,
CALICUT.

BY ADV. SRI.S.ANANTHAKRISHNAN
SRI.SHYAM PADMAN
SRI.N.K.SUBRAMANIAN

RESPONDENTS:
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1. **POMATH ASHARF, S/O.KUNHAMMED,**
   KARUVISSERI P.O., VENGERI AMSOM,
   KARUVISSERI DESOM.

2. **P.P.AJITH KUMAR,**
   S/O.VASU, PUTHUKULANGARA, PARAMMAL P.O.,
   KARUVISSERI, VENGERI AMSOM, KURUVISSERI DESOM.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.13085/2007 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE INTERIM REPORT DTD. 09/06/2004 FILED BY THE COMMISSIONER.**

EXT.P2: **COPY OF THE AFFIDAVIT AND APPLICATION DTD. 16/07/2006 FILED BY THE PETITIONER.**

EXT.P3: **COPY OF THE FINAL REPORT DTD. 22/08/2006 FILED BY THE COMMISSIONER.**

EXT.P4: **COPY OF THE AFFIDAVIT AND APPLICATION DTD. 28/09/2006 FILED BY THE PETITIONER.**

EXT.P5: **COPY OF THE ORDER DTD. 21/02/2007 PASSED IN I.A.NO.4452 OF 2006 IN O.S.NO.233 OF 2004.**

/TRUE COPY/

KSS

M.N.KRISHNAN, J.

WP(C)No. 13085 OF 2007 G

Dated this the 5th June, 2007.

JUDGMENT

This writ petition is filed seeking to quash Ext.P5 order passed in I.A.4452/06 in O.S.233/04 of the Munsiff Court I, Kozhikode. The petition is one to set aside the Commissioner's plan and report and in the alternative to remit the report to the Advocate Commissioner directing him to file a fresh report.

2. Respondents served and they are not represented by any Advocate. Heard learned counsel for the writ petitioner.

3. Learned counsel for the writ petitioner had taken me through the report filed by the Commissioner as Ext.P3. In Ext.P3 it is stated that the defendant had given a work memo at the site and wanted to look into the details with reference to document No:678/1955 and other relevant documents. The Commissioner had expressed his inability to do the work on that day and further reports on account of the non-cooperation of the plaintiff he was not able to note the particulars required in the work memo. So, it is crystal clear from the report of the Commissioner himself that he has not noted the particulars wanted by the defendants in this case. It is in that background they

filed an application for setting aside the Commissioner's plan and report. The court has stated that no Commissioner's report is necessary to find out whether the tank is a public tank or a private tank. But the very same court has appointed a commissioner to inspect the property. So, the said finding cannot have much bearing. When a commission is issued at the instance of the plaintiff and the defendants also enter appearance and wanted additional particulars to be noted in order to substantiate their contentions and have filed a work memo before the court, it is only just and proper that those factors are also noted so as to facilitate the party to raise their contentions. I find the order passed by the learned Munsiff in refusing to remit the plan and report is not correct. It is true that there are no materials to establish the plan and report are incorrect at this stage. Therefore, the order under challenge is set aside and the learned Munsiff is directed to remit the Commissioner's plan and report to the very same Commissioner for inspection of the property and to furnish the details which are required in the work memo submitted by the defendants. The defendants are also permitted to file a fresh work memo, if they want to add additional particulars for their purpose. If the plaintiff also is in need of additional

particulars he may also file a work memo. For the time being the expense of the remission of the Commissioner's report has to be met by the defendants and ultimately it will be decided by the court. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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